

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
PETITION FOR
REHEARING**

77-7013

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 1037-1039

September Term 1976

----- x

BROWNING DEBENTURE HOLDERS'	:	
COMMITTEE, on behalf of itself,	:	
of its Members and of all other	:	Docket Nos.
Holders of 6% Convertible	:	77-7013
Subordinated Debentures Due July 1,	:	77-7014
1987 of Dasa Corporation, etc.;	:	77-7074
SIMMS C. BROWNING, etc.; and ROY E.	:	
BREWER, etc.,	:	

Plaintiffs-Appellants,

-against-

DASA CORPORATION, et al.; ARTHUR
ANDERSEN & CO., etc.; and THE BANK OF
NEW YORK, Trustee under the Indenture
dated as of July 1, 1967 between The
Bank of New York and Dasa Corporation,
etc.,

Defendants-Appellees.

----- x

PETITION FOR REHEARING AS TO COSTS
ON BEHALF OF PLAINTIFF-APPELLANT
SIMMS C. BROWNING

ANDERSON RUSSELL KILL & OLICK, P.C.
Attorneys for Petitioner and
Plaintiff-Appellant Simms C. Browning
630 Fifth Avenue
New York, New York 10020
(212) 397-9700

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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Defendants-Appellees.

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PETITION FOR REHEARING AS TO COSTS
ON BEHALF OF PLAINTIFF-APPELLANT
SIMMS C. BROWNING

TO THE HONORABLE JUDGES OF THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT:

Preliminary Statement

SIMMS C. BROWNING, one of the plaintiffs-appellants
above named, by his attorneys, Anderson Russell Kill & Olick,
P.C., respectfully petitions this Court pursuant to Rule 40 of

the Federal Rules of Appellate Procedure for a rehearing in the above-entitled cause, on the question of the Court's award of costs against plaintiff-appellant Simms C. Browning ("Browning"). The basic grounds for this petition are that:

(i) Browning was successful on the single issue he presented to this Court -- a challenge to the award of attorneys' fees for defendant-appellee Arthur Andersen & Co. ("Andersen") and against Browning on the basis of his former attorney's alleged conduct;

(ii) Browning had resolved his differences with the other defendants-appellees prior to this appeal, thus did not participate in the bulk of the appeal involving the merits and should not be assessed costs; and

(iii) The aspects of this appeal which generated the bulk of the costs related to issues as to which Browning was not involved.

In addition, we respectfully urge that in the interests of clarity this Court's opinion should reflect that the undersigned counsel were not involved in this litigation until well after the underlying events which gave rise to the claims for attorneys' fees took place and were engaged after the trial to represent Browning's interests as to the assessment of attorneys' fees as against him.

Factual Background

By Notice of Appeal dated February 7, 1977, Browning appealed from the Judgment of the United States District Court for the Southern District of New York by the Honorable Richard Owen assessing attorneys' fees against Browning and in favor of defendant Andersen. Prior to the appeal, the action had been settled as between Browning and the other defendants.

On January 8, 1976, the Court below held that the action had been instituted and maintained in bad faith and that defendant-appellees DASA and The Bank of New York should be reimbursed by plaintiffs' attorney, Bradley Brewer and by plaintiffs Roy E. Brewer and Browning for legal fees and costs and disbursements. Andersen then also sought an order requiring Bradley Brewer and plaintiffs below to pay its legal fees and costs and disbursements.

Until January 28, 1976, Browning was represented by Bradley Brewer, Esq. In view of Judge Owen's January 8, 1976 order, this firm was substituted as counsel for Browning on January 28, 1976 and immediately sought reargument to the extent that Browning's good faith was questioned and to the extent

the Court determined to award attorneys' fees against Browning.

In support of his position, Browning submitted an extensive affidavit relative to his good faith belief in the bona fides of his claim and his total lack of meaningful involvement in the procedural and discovery aspects of the case. Browning's lack of involvement was conceded by attorney Brewer who assumed full responsibility for the conduct of the case.

Although the Court below granted reargument, it adhered to its original opinion holding plaintiff Browning liable together with plaintiff Roy Brewer and their attorney Bradley Brewer and further held that no hearing on the issue of Browning's good faith was required since such alleged good faith was held to be immaterial.

Subsequently, the Court, after a hearing, awarded attorneys' fees, including fees in favor of Andersen against Browning. According to Judge Owen, the award was based upon an "utterly meritless cause of action" and "numerous motions" involving Andersen even following dismissal of the claims against it.

On February 17, 1977, counsel for Browning filed with this Court a Civil Appeal Pre-Argument Statement (a copy of which is attached as Exhibit "A" hereto) which succinctly set forth the

relevant issues pertaining to the single question Browning presented to this Court - the propriety of Judge Owen's assessment of attorneys' fees against Browning and in favor of defendant Andersen. Such issues were enumerated as follows:

"I. Reliance on advice of counsel is a defense to assessment of attorneys' fees for alleged malicious prosecution.

II. The district court erred in holding that Browning's good faith is immaterial to the propriety of assessing attorneys' fees against him.

III. The securities laws do not authorize attorneys' fees in this case.

IV. An award of attorneys' fees against plaintiff who files a claim in good faith is unconstitutional."

The brief filed in support of Browning's appeal similarly involved only the lower court's award of attorneys' fees against Browning. (Brief of Plaintiff-Appellant Simms C. Browning, pp. 3-4, copies of which are attached as Exhibit "B".)

The relief prayed for by Browning in his appellate brief specifically requested that "the decision of the Court below should be reversed as to Browning and the award in favor of Andersen should be set aside. Alternatively, the case should be remanded for a hearing on the question of Browning's good faith." (Id. at 30-31, copies of which are attached as Exhibit "B".)

In an opinion by Circuit Judge Mansfield, joined in by Circuit Judges Lumbard and Gurfein, this Court granted such relief and held (Slip. Op. 5239, 5240):

"Bradley Brewer's procedural bad faith, moreover, may not automatically be visited upon the other plaintiffs personally. Bad faith is personal, see Hall v. Cole, 412 U.S. 1, 5 (1973). Since an award of costs or attorneys' fees based on bad faith must likewise be personal, such an award may be assessed against plaintiffs Roy E. Brewer or Simms C. Browning only after reconsideration and such hearing as the district court finds necessary, that they personally were aware of or otherwise responsible for the procedural action instituted in bad faith. Otherwise, such awards may be assessed only against Bradley Brewer under 28 U.S.C. §1927. See Acevedo v. Immigration and Naturalization Service, 538 F.2d 918 (2d Cir. 1976)."

* * * *

"We therefore affirm on the merits and as to all collateral issues raised on appeal except the award of attorneys' fees, which is remanded for a redetermination in accordance with this opinion. Costs will be assessed against appellants."

POINT I

It is clearly apparent from a reading of the above-quoted passages that this Court ruled in favor of Browning on the sole issue that he presented to this Court -- the award of attorneys' fees against Browning and for defendant Andersen. Under the circumstances, it is respectfully submitted that the

assessment of costs against Browning in this matter is inappropriate since he was a prevailing appellant. Indeed, it would appear that Browning is entitled to costs as against Andersen under Rule 39 of the Federal Rules of Appellate Procedure in view of his successful appeal.

POINT II

Prior to the appeal, Browning had resolved his differences with the other defendants-appellees in this action. As a result, it would be inequitable for Browning to bear the costs of the other defendants-appellees since no controversy existed between the other defendants-appellees and Browning during any stage of the appellate process.

POINT III

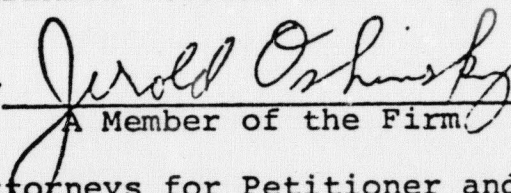
The aspects of this appeal which generated the overwhelming bulk of the costs in this matter related to issues as to which Browning was not involved on appeal. Such issues as to which Browning was not involved included the substantive merits and the award of attorneys' fees to defendants DASA and the Bank of New York.

WHEREFORE, upon the foregoing grounds, it is respectfully urged that this petition for rehearing be granted and that the Court's award of costs against the appellants be modified so

as to exclude the prevailing plaintiff-appellant Simms C. Browning from taxation of costs and for such other and further relief as this Court deems just and proper.

ANDERSON RUSSELL KILL & OLICK, P.C.

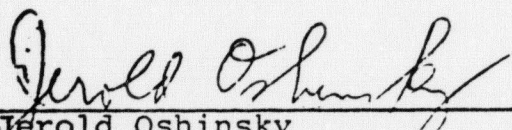
By


A Member of the Firm

Attorneys for Petitioner and Plaintiff-
Appellant Simms C. Browning
630 Fifth Avenue
New York, New York 10020
(212) 397-9700

CERTIFICATE OF COUNSEL

I, JEROLD OSHINSKY, a member of the firm of Anderson Russell Kill & Olick, P.C., attorneys for plaintiff-appellant Simms C. Browning, do hereby certify that the foregoing petition for a rehearing is presented in good faith and not for the purpose of delay.



Jerold Oshinsky
ANDERSON RUSSELL KILL & OLICK, P.C.
630 Fifth Avenue
New York, New York 10020
(212) 397-9700

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

2067

CIVIL APPEAL PRE-ARGUMENT STATEMENT

(To be filed by appellant with Clerk of Court of Appeals and served on other parties within ten days after filing notice of appeal.)

CASE TITLE (Complete)

BROWNING DEBENTURE HOLDERS' COMMITTEE, et al.

Plaintiffs,

-against-

DASA CORPORATION, et al.,

Defendants.

(Attach additional sheets if space is not sufficient)

APPEAL FROM DISTRICT COURT

DISTRICT ▶ S.D.N.Y.

DISTRICT COURT DOCKET NUMBER ▶ 72 Civ. 1332 (RO)

DATE FILED IN DISTRICT COURT ▶ MO. DAY YEAR

DATE NOTICE OF APPEAL FILED ▶ 2 7 77

RELATED CASE(S) ▶ none

Is this a cross appeal YES NO

COUNSEL NAME
FOR APPELLANTS:

ADDRESS

TELEPHONE

See Rider 1 attached.

FOR APPELLEES:

(Check One Box Only)

NATURE OF SUIT

CONTRACT	TORTS	ACTIONS UNDER STATUTES			
		CIVIL RIGHTS	FORFEITURE/PENALTY	PROPERTY RIGHTS	OTHER STATUTES
☐ INSURANCE	☐ PERSONAL INJURY	☐ VOTING	☐ AGRICULTURE	☐ COPYRIGHT	☐ TRADEMARK
☐ MARINE	☐ AIRPLANE	☐ JOBS	☐ FOOD & DRUG	☐ PATENT	
☐ BUILDING ACT	☐ ASSAULT, LIBEL & SLANDER	☐ ACCOMMODATIONS	☐ LIQUOR LAWS	☐ STATE RE APPOINTMENT	☐ AGRICULTURAL ACTS
☐ RESPONSIBLE EMPLOYMENT	☐ FEDERAL EMPLOYEES	☐ WELFARE	☐ R.R. & TRUCK	☐ ANTI TRUST	☐ ECONOMIC STABILIZATION ACT
☐ SECURITY OF DEPOSIT OFF & ENFORCEMENT OF JUDGMENT	☐ MARINE	☐ OTHER CIVIL RIGHTS	☐ AIR LINE REGS	☐ BANKRUPTCY TRUSTS	☐ ENVIRONMENTAL MATTERS
☐ OTHER CONTRACT	☐ MOTOR VEHICLE	☐ PRISONER PETITIONS	☐ OTHER	☐ BANKS AND BANKING	
	☐ OTHER PERSONAL INJURY	☐ VACATE SENTENCE 12114	☐ LABOR	☐ COMMERCE REG. MATES ETC	☐ CONSTITUTIONALITY OF STATE STATUTES
☐ REAL PROPERTY	☐ PERSONAL INJURY	☐ PAROLE AND REVIEW	☐ LABOR/WORK STANDARDS	☐ DEPORTATION	☐ MAR. TITLE III
☐ CONDEMNATION	☐ FRAUD	☐ HABEAS CORPUS	☐ LABOR/WORK STANDARDS	☐ SELECTIVE SERVICE	☐ OTHER STATUTORY ACTIONS
☐ FORECLOSURE	☐ OTHER PERSONAL INJURY	☐ MANDAMUS	☐ LABOR/WORK STANDARDS	☐ SECURITIES COMMODITIES EXCHANGES	
☐ RENT LEASE & EJECTMENT	☐ OTHER PERSONAL INJURY	☐ CIVIL RIGHTS	☐ RAILWAY LABOR ACT	☐ SOCIAL SECURITY	
☐ TORTS TO LAND			☐ OTHER LABOR SITUATION	☐ TAX SUITS	
☐ ALL OTHER REAL PROPERTY					

METHOD OF DISTRICT COURT DISPOSITION

Judgment before trial:	Prisoner petition:
Summary Judgment ☐	Granted ☐
Dismissal ☐	Denied ☐
Other ☐	
Judgment during or after trial:	Injunction:
Court trial ☒	Granted ☐
Jury trial ☐	Denied ☒
During trial ☐	
Appeal from order:	Damages:
Preliminary injunction ☐	Granted ☒
Class action ☐	Amount \$ 000.00
Amend answer ☐	Denied ☐
Enforce settlement ☐	Other relief (specify)
Counsel fees ☒	
Stay ☐	
Other ☐	

APPROXIMATE SIZE OF RECORD ▶ See Note 1 NUMBER OF EXHIBITS ▶ See Note 2 HAS TRANSCRIPT BEEN MADE ? * YES NO

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW:

See Rider 2 attached.

ISSUES PROPOSED TO BE RAISED ON APPEAL:

See Rider 3 attached.

Note 1 - 4 shelf feet according to counsel for other appellants.

Note 2 - 117 exhibits according to counsel for other appellants.

I, Attorney for the Appellant, hereby certify that satisfactory arrangements have been made with the court reporter for payment of the cost of the transcript (FRAP 10 (b)). (Check one box)

I ☐ (1) have already ordered the transcript to be prepared OR* I ☒ (2) will order it to be prepared at the time required by the Staff Counsel in the implementation of the Civil Appeals Management Plan.

COUNSEL'S SIGNATURE

FOR APPELLANTS: Simms C. Browning

DATE February 17, 1977

*The portion of the transcript regarding this appellant has been transcribed.

RIDER 1

<u>Name of Counsel and Client</u>	<u>Address</u>	<u>Telephone</u>
Anderson Russell Kill & Olick, P.C. Attorneys for Appellant Simms C. Browning	630 Fifth Ave. New York, N.Y. 10020	(212) 397-9700
Brewer & Soeiro Bradley R. Brewer Of Counsel Attorneys for Appellant Roy E. Brewer and Bradley R. Brewer	257 Park Ave. So. New York, N.Y. 10010	(212) 777-4010
Jacobs, Persinger & Parker Attorneys for Appellees DASA Corporation Richard A. Reichter Ronald W. Bolivar Robert Le Buhn Ernest T. Greeff Roderick A. Munroe Edgar B. Stern	70 Pine St. New York, N.Y. 10005	(212) 344-1866
Breed, Abbott & Morgan Attorneys for Appellee Arthur Andersen & Co.	1 Chase Manhattan Plaza New York, N.Y. 10005	(212) 676-0890
Sullivan & Cromwell Attorneys for Appellee The Bank of New York	48 Wall Street New York, N.Y. 10005	(212) 952-8100

RIDER 2

Civil action commenced by holders of convertible bonds concerning a proxy solicitation by DASA Corp. offering an unfair conversion price to the bondholders in exchange for their agreeing to sacrifice certain rights. Plaintiff alleged that the proxy solicitation material violated §14(a) of the Securities Exchange Act and the Proxy Rules and that the corporation and its officers breached their fiduciary duties to the bondholders under state law principles of equity and under federal fiduciary duties by offering an unfair conversion price and that Arthur Andersen & Co. omitted material facts in connection with a document furnished with the proxy materials. The district court, having dismissed the complaint, assessed attorneys' fees against plaintiffs Roy Brewer and Simms C. Browning and their attorney Bradley Brewer for malicious prosecution. Attorney Brewer assumed full responsibility for the conduct of the case. The action between Simms C. Browning and defendants DASA Corp. and The Bank of New York has been settled. Arthur Andersen & Co. has a judgment against Simms C. Browning which is the remaining subject of Browning's appeal. [Plaintiff-Appellant Simms C. Browning paid a docket fee of \$50.00 on September 3, 1976.]

RIDER 3

I. Reliance on advice of counsel is a defense to assessment of attorneys' fees for alleged malicious prosecution.

II. The district court erred in holding that the plaintiff Browning's good faith is immaterial to the propriety of assessing attorneys' fees against him.

III. The securities laws do not authorize attorneys' fees in this case.

IV. An award of attorneys' fees against plaintiff who files a claim in good faith is unconstitutional.

UNITED STATES COURT OF APPEALS
SECOND CIRCUITTRANSCRIPT INFORMATION
CIVIL APPEALTo be completed by counsel for appellant in civil appeal from
district court within ten days after filing notice of appeal.DISPOSITION OF COPIES: (1) to Clerk of the Court of Appeals; (2) and (3) to Court Reporter; (4) Counsel for Appellant;
(5) retained by Counsel for Appellant.

THIS SECTION TO BE COMPLETED BY COUNSEL FOR APPELLANT

CASE TITLE	DISTRICT	DOCKET NUMBER
BROWNING DEBENTURE HOLDERS' COMMITTEE, et al.,	S.D.N.Y.	72 Civ. 1332 (RO)
Plaintiffs,	JUDGE	APPELLANT
-against-	Richard Owen	Plaintiff, Simms C. Browning
DASA CORPORATION, et al.,	COURT REPORTER	COUNSEL FOR APPELLANT
Defendants		Anderson Russell Kill & Olick, P.C.

TRANSCRIPT ORDER

Must be completed

DESCRIPTION OF PROCEEDINGS FOR WHICH
TRANSCRIPT IS REQUIRED (INCLUDE DATES)

I am ordering a transcript.

I am not ordering a transcript:
Reason:☐ Daily copy is available.☒ Other. Attach explanation.* See
explanation given on right.

* Transcripts deemed essential for appeal apparently will be ordered and obtained by counsel for other appellants. Whether or not transcripts of other testimony or remainder of trial will be ordered will depend upon whether such counsel submits all necessary transcripts. We have ordered the transcript of testimony of plaintiff Simms C. Browning, who is the only party that we represent.

METHOD OF PAYMENT ☐ FUNDS ☐ CJA VOUCHER (CJA 21)

- ☐ PREPARE TRANSCRIPT OF PRE-TRIAL PROCEEDINGS
- ☐ PREPARE TRANSCRIPT OF TRIAL
- ☐ PREPARE TRANSCRIPT OF OTHER POST-TRIAL PROCEEDINGS
- ☐ PREPARE (Other: Specify)

DELIVER TRANSCRIPT TO: (NAME, ADDRESS, TELEPHONE)

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)). I understand that unless I have already ordered the transcript, I shall order its preparation at the time required by the Civil Appeals Management Plan, F.R.A.P. and the local rules. In view of the above statement, this certification is inapplicable to appellant Browning.

COUNSEL'S SIGNATURE

Jerold Oshinsky

DATE

February 17, 1977

COURT REPORTER ACKNOWLEDGEMENT

To be completed by court reporter. Return one copy to
clerk, U.S. Court of Appeals.

DATE ORDER RECEIVED

ESTIMATED COMPLETION DATE

ESTIMATED NUMBER OF PAGES

SIGNATURE OF COURT REPORTER

DATE

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

----- -x
BROWNING DEBENTURE HOLDERS' :
COMMITTEE, et al., :

Plaintiffs, :

-against- :

DASA CORPORATION, et al., :

Defendants. :
----- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ANNE FITZGERALD, being duly sworn, deposes and says:

I am employed by Anderson Russell Kill & Olick, P.C.,
am over the age of 18 and reside in the State of New York.

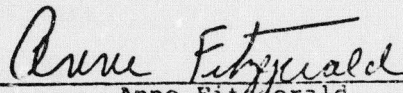
On February 17, 1977 I mailed a copy of the within
Civil Appeal Pre-Argument Statement (Form C), Riders 1, 2 and 3
and Appeals (Form D), annexed hereto, by depositing same, enclosed
in a sealed postpaid wrapper in the post office box regularly
maintained by the U.S. Postal Service at 630 Fifth Ave., New York,
N.Y., addressed to the following attorneys:

Brewer & Soeiro
257 Park Ave. South
New York, N.Y. 10010

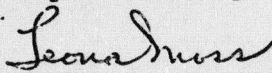
Jacobs, Persinger & Parker
70 Pine Street
New York, N.Y. 10005

Breed, Abbott & Morgan
One Chase Manhattan Plaza
New York, N.Y. 10005

Sullivan & Cromwell
48 Wall Street
New York, New York 10005


Anne Fitzgerald

Sworn to before me this
17th day of February, 1977.


Notary Public

NOTARY PUBLIC, State of New York
No. 4155
Qualified in County of New York
Commission Expires March 30, 1978

was required since such alleged good faith was held to be immaterial.

Subsequently, after the submission of affidavits of legal services with supporting documentation, including bills to clients by plaintiff, the Court, after a hearing awarded attorneys' fees, including Andersen against Browning. According to Judge Owen, the award was based upon an "utterly meritless cause of action" and "numerous motions" involving Andersen even following dismissal of the claims against it.

Issues Presented for Review

I. Whether good faith reliance upon advice of counsel is a defense to assessment of attorneys' fees for a claim in the nature of alleged malicious prosecution.

II. Whether the district court erred in holding that Browning's good faith was immaterial and refusing to hold a hearing on that issue.

III. Whether the securities laws authorize attorneys' fees against Browning in this case.

IV. Whether an award of attorneys' fees against a plaintiff who filed a claim in good faith violates his First Amendment constitutional right to petition.

v. Whether liability for the attorneys' fees should have been allocated.

STATEMENT OF THE CASE

Appellant Browning will limit his statement of the case to matters directly affecting him since other parties undoubtedly will state the case in its entirety.

The facts applicable to Browning's appeal are simple and essentially not in dispute. Browning submitted a grievance to an attorney who advised Browning he had legal remedies. Browning, not an attorney and unsophisticated in legal matters, necessarily relied upon his attorney's advice.

Mr. Browning's personal good faith has not been challenged. Browning remains in this case simply because the total conduct of his attorney was found to warrant the imposition of attorneys' fees and imputed to Browning by the Court below.* This finding was rendered notwithstanding the District Court's statement that "in an affidavit accompanying his motions, Bradley Brewer took full responsibility as counsel, for the procedural conduct of the suit" (Memorandum and Order, July 23, 1976, p. 2, n. 3).

*A detailed statement of Browning's position is set forth in his affidavit of February 13, 1976.

Estate of Canale v. Binghamton Amusement Co., 45 App. Div. 2d 424, 357 N.Y.S.2d 931 (3rd Dept. 1974), aff'd, 37 N.Y.2d 875, 378 N.Y.S.2d 362 (1975) (25%-75% - apportionment of damages among joint tortfeasors based on relative fault); Adams v. Lindsay, 77 Misc.2d 824, 354 N.Y.S.2d 356 (Sup. Ct. 1974) (70%-30% - apportionment of damages between defendant and third-party plaintiff and third-party defendant based on relative fault); Berliner v. Kacov, 79 Misc.2d 891, 361 N.Y.S.2d 477 (Sup. Ct. 1974), modified, 51 App. Div.2d 962, 380 N.Y.S.2d 722 (2d Dept. 1976) (85%-15% - apportionment of damages between defendant based on relative fault).

Pursuant to the foregoing, Browning respectfully requests that the Court below should have allocated a very small percentage of liability to his "relative culpability", if any, for the Andersen claim.

CONCLUSION

For the reasons stated herein, the decision of the Court below should be reversed as to Browning and the award in favor of Andersen should be set aside. Alterna-

tively, the case should be remanded for a hearing on the question of Browning's good faith.

Respectfully submitted,

ANDERSON RUSSELL KILL & OLICK, P.C.
Attorneys for Plaintiff-Appellant
Simms C. Browning
630 Fifth Avenue
New York, New York 10020
(212) 397-9700

Of Counsel
Jerold Oshinsky
R. Mark Keenan

UNITED STATE COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 1037-1039

September Term 1976

----- x

BROWNING DEBENTURE HOLDERS' COMMITTEE,	:	
on behalf of itself, of its Members	:	
and of all other Holders of 6% Con-	:	Docket Nos.
vertible Subordinated Debentures Due	:	77-7013
July 1, 1987 of Dasa Corporation, etc.;	:	77-7014
SIMMS C. BROWNING, etc.; and ROY E.	:	77-7074
BREWER, etc.,	:	

Plaintiffs-Appellants, :

-against- :

AFFIDAVIT OF
SERVICE BY MAIL

DASA CORPORATION, et al.; ARTHUR ANDERSEN	:
& CO., etc.; and THE BANK OF NEW YORK,	:
Trustee under the Indenture dated as of	:
July 1, 1967 between The Bank of New York	:
and Dasa Corporation, etc.,	:

Defendants-Appellees. :

----- x

STATE OF NEW YORK	)	
	:	ss.:
COUNTY OF NEW YORK	)	

LEONA MOSS, being duly sworn, deposes and says:

On August 25, 1977 deponent served the within Petition for Rehearing as to Costs on Behalf of Plaintiff-Appellant Simms C. Browning upon the attorneys for the parties in this action at the below-listed addresses designated by said attorneys for

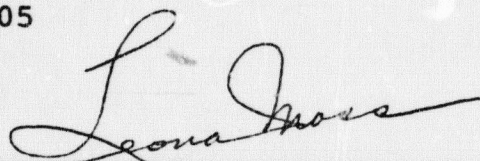
that purpose by depositing true copies of same enclosed in post-paid properly addressed wrappers, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, directed as follows:

Bradley R. Brewer, Esq.
Brewer & Soeiro
257 Park Avenue South
New York, New York 10010

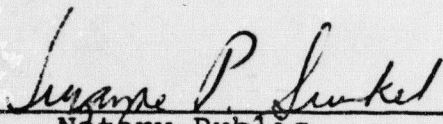
David M. Olasov, Esq.
Sullivan & Cromwell
48 Wall Street
New York, New York 10005

Beverly I. Fatz, Esq.
Breed, Abbott & Morgan
One Chase Manhattan Plaza
New York, New York 10005

Isaac M. Bayda, Esq.
Jacobs, Persinger & Parker
70 Pine Street
New York, New York 10005



Sworn to before me this
25th day of August 1977.



Notary Public

SUZANNE P. SUNKEL
Notary Public, State of New York
No. 41-4605392
Qualified in Queens County
Commission Expires March 30, 1979

